JON T. MILLHOUSE

IBLA 94-791 Decided December 31, 1997

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void. FF-62091 through FF-62096.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   The BLM properly declares mining claims abandoned where mining claimant neither paid the $100 per claim rental fee nor filed certificates of exemption on or before Aug. 31, 1993, for the 1993 and 1994 assessment years. Mining claimants were not entitled to individualized notice of the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992).

APPEARANCES: John T. Millhouse, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Jon T. Millhouse has appealed a July 1, 1994, Decision of the Alaska State Office, Bureau of Land Management (BLM), declaring the Antimony #1 Slate Creek to Antimony #4 Slate Creek lode (FF-62091 through FF-62094) and the Slate Creek Antimony #1 and Slate Creek Antimony #2 placer (FF-62095 and FF-62096) mining claims abandoned and void for failure to pay the $100 claim rental fees or file certificates of exemptions for each of the 1993 and 1994 assessment years on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992) (1992 Act).

Appellant states that he was unaware of the August 31, 1993, filing deadline and was not advised by mail of any change in the law. He recounts that he was prospecting in Canada's Yukon Territory during August 1993. He

contends that changing the filing date for claims without advising the mining claimant is tantamount to seizing his property. (Appellant's Statement of Reasons at 1.)

[1] The 1992 Act provided in relevant part:

> [F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA), (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *

106 Stat. 1378. The 1992 Act contained an identical provision governing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of a $100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The 1992 Act provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer mining claims, mill sites, or tunnel sites. Id.

Congress in the 1992 Act mandated that the "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment." 106 Stat. 1379. Similar language was held to be self-operative in United States v. Locke, 471 U.S. 84 (1985); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). In Locke, the United States Supreme Court upheld the constitutionality of section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1994), concluding that a mining claim for which a timely filing was not made was extinguished by operation of law notwithstanding the claimants's intent to hold. United States v. Locke, 471 U.S. at 100.

In Rice, we reasoned that the Board "must assume that Congress was aware of the interpretation that the Department and the courts had given to section 314 of FLPMA and intended the present language [in the Act at issue] to be given the same construction." 128 IBLA at 141. The Department, we held, was "without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences."

Appellant's claim that BLM has unlawfully seized or taken his property is rejected. The Federal Circuit has recently upheld the Act against a Fifth Amendment takings challenge. Kunkes v. United States, 32 Fed. Cl.

249 (Ct. Fed. Cl. 1994), aff'd, 78 F.3d 1549 (Fed. Cir. 1996). Although this Board has no authority to declare an act of Congress or a duly promulgated regulation unconstitutional, see Jerry L. Fabrizio, 138 IBLA 116 (1997); Chester Wittwer, 136 IBLA 96, 100 (1996); Amerada Hess Corp., 128 IBLA 94, 98 (1993), and cases cited, we have rejected claims that the Act or regulations involved here afforded mining claimants inadequate notice or did not pass constitutional muster. In rejecting these claims, we reiterated the rule that all persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lester W. Pullen, 131 IBLA 271, 273 (1994). The BLM, in this case, published notice of the 1992 Act's rental fee requirement on November 16, 1992 (57 Fed. Reg. 54102), in addition to publishing notice of proposed and final rulemaking. See 58 Fed. Reg. 12878 (Mar. 5, 1993), 58 Fed. Reg. 38186 (July 15, 1993).

The Constitution did not require individualized notice of the filing requirements in FLPMA. United States v. Locke, 471 U.S. at 108; Gordon B. Copple, 105 IBLA 90, 95 Interior Dec. 219 (1988). Nor do we hold that BLM was required to send Appellant individualized notice of the Act's requirements in this case. Dee W. Alexander Estate, 131 IBLA 39, 42-43 (1994).

Because Appellant neither paid the required rental fees nor filed for an exemption from the requirement to do so on or before August 31, 1993, BLM properly declared his claims abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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Will A. Irwin
Administrative Judge

I concur:

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James L. Burski
Administrative Judge